

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

-----X  
ONEWEST BANK, NA,

Plaintiff

v.

FRITZ OBAS,  
NADEGE GEORGES et. al

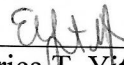
Defendant  
-----X

NOTICE OF MOTION  
14-CV-03238

PLEASE TAKE NOTICE that upon the annexed affidavit of Nadge Georges, sworn to on June 3, 2016, and memorandum of law of Erica T. Yitzhak, Defendant, Nadge Georges, will move this court, for an order (a) pursuant to Rule 6 of the Federal Rules of Civil Procedure, granting Nadege George's motion vacating the Default Judgment entered against her, (b) granting such other relief this Court deems just, proper or equitable.

Dated: June 10, 2016

Great Neck, NY

  
\_\_\_\_\_  
Erica T. Yitzhak Esq. P.C.  
By: Erica T. Yitzhak  
Attorney for the Defendant  
Erica T. Yitzhak Esq. P.C.  
17 Barstow Road, Suite 406  
Great Neck, New York  
(516) 466-7144

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

-----X  
ONEWEST BANK NA,

Plaintiff,

-against-

FRITZ OBAS, NADEGE GEORGES,  
LEONARD DELASKY

Defendants.  
-----X

**ATTORNEY AFFIRMATION  
IN SUPPORT OF MOTION  
TO VACATE DEFAULT  
JUDGMENT**

2: 14-CV-03238

Erica T. Yitzhak, Esq., pursuant to CPLR 2106[NYCLS] and under the penalties of perjury, affirms as follows:

1. I am an attorney at law at the Law Offices of Erica T. Yitzhak, P.C., the attorney of record for the Defendant in this action and as such am fully familiar with the facts of this case and the proceedings heretofore and herein.
2. The within motion is to vacate a default judgment entered against Defendant on March 15, 2016.
3. At approximately 4:46 PM on Thursday June 2, 2016, my associate John Scherer Esq. sent a facsimile to Gross Polowy LLC, attention to Michael William Nardolillo, advising him that an application would be made by Defendant of a temporary restraining order and an order directing him to show cause why he should not be preliminarily enjoined. (Ex. A)
4. Since the foreclosure auction is scheduled for June 7, 2016, this motion has been brought by order to show cause and no prior request has been made for the relief requested herein.

WHEREFORE, your Affirmant respectfully prays for the relief requested in the annexed Motion.

Dated: June 3, 2016

Great Neck, New York

I hereby certify pursuant to 22 NYCRR §130-1.1-a that to the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of the papers listed below or the contentions therein are not frivolous as defined in 22 NYCRR §130-1.1(c):

  
\_\_\_\_\_  
Erica T. Yitzhak, Esq.

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

-----X  
ONEWEST BANK NA,

Plaintiff,

-against-

FRITZ OBAS, NADEGE GEORGES,  
LEONARD DELASKY

Defendants.  
-----X

**MEMORANDUM OF LAW  
IN SUPPORT OF MOTION  
TO VACATE DEFAULT  
JUDGMENT**

2: 14-CV-03238

Defendant Nadege Georges, (“Defendant”), by her attorney Erica T. Yitzhak, Esq. P.C., respectfully submits this Memorandum of Law in support of Defendant’s motion to vacate default judgment pursuant to Federal Rules of Civil Procedure §55(c) and 60 pending the hearing of Defendant’s motion.

**STATEMENT OF FACTS**

The summons and complaint was not personally served on Defendant Nadege Georges and she had no knowledge about this matter until she received a Notice of sale. It was at that time that Defendant retained her attorney. Defendant was also never served with a motion for default judgment in this matter. I informed Defendant that the Summons’s, Complaint and Motion for a default judgment were all allegedly served at 1330 East Street, Elmont, New York. Defendant resides at 1330 E Street , Elmont, New York, which is a different address as there is both an E Street and an East Street in Elmont. There are two conflicting Summons’ filed in this matter, and no affidavit of service of the Summons and Complaint is filed on Pacer. (Ex “A”) Furthermore, the motion for a default judgment, per the filed affidavit of service, was sent to the East Street address, which is incorrect. (Ex “B”)

## ARGUMENT

### **LACK OF PERSONAL JURISDICTION FOR IMPROPER SERVICE OF PROCESS**

If service upon Defendant is improper, the court lacks personal jurisdiction over the Defendant, and a default judgment entered against him must be vacated. *U.S. v. Cally*, 197 F.R.D. 27 (E.D.N.Y. 2000); *Triad Energy Corp. v. McNell*, 110 F.R.D. 382 (S.D.N.Y. 1986). See *Humphrey v. New York Life Ins. Co.*, 2006 WL 3837718 (E.D.N.Y. 2006); *Palmieri v. Town of Babylon*, 2006 WL 1155162 (E.D.N.Y. 2006).

“[S]ervice pursuant to CPLR § 308 to the wrong address,. . . confers no personal jurisdiction over the defendant.” *Ahluwalia v. St. George's Univ., LLC*, 63 F. Supp. 3d 251, 261 (E.D.N.Y. 2014); (citing *Obrycki v. Ryp*, 972 N.Y.S.2d 145 (2013)). Under Federal Rule 60 (b), a default judgment shall be vacated on the grounds that the court did not have jurisdiction to hear the matter. If service was not proper, the court does not have jurisdiction, and the default judgment and judgment of foreclosure and sale must be vacated. “Under Rule 55(c), an entry of default may be set aside ‘[f]or good cause shown.’” *FBM Holdings LLC v. Goldwerks, Inc.*, No. 03CV2939(DRH), 2006 WL 1229160, at \*1 (E.D.N.Y. May 5, 2006). Also, “a judgment is void if entered against a party over whom the court lacks personal jurisdiction.” *Id.* (holding that since the Defendant has shown that he was not properly served, the default judgment is vacated pursuant to rule 60(b)(4)).

“Rule 55 does not define the term “good cause”, the Second Circuit has established three criteria that must be considered in deciding whether to vacate a default judgment: “(1) whether the default was willful; (2) whether setting aside the default would prejudice the adversary; and (3) whether a meritorious defense is presented.” *Enron Oil Corp. v. Diakuhara*, 10 F.3d 90, 96 (2d Cir. 1983).” *FBM Holdings LLC v. Goldwerks, Inc.*, No. 03CV2939(DRH), 2006 WL

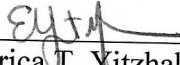


1229160, at \*1 (E.D.N.Y. May 5, 2006). Under Federal Rule 60 (b), the defendants are entitled to relief from the judgment. “A court retains its discretionary power to vacate its own judgment for sufficient reason and in the interests of substantial justice.” (Goldman v. Cotter, 10 AD3d 289, 293, quoting Woodson v. Mendon Leasing Corp., 100 NY2d at 68; see Ladd v. Stevenson, 112 NY 325, 332). In the instant matter, the Defendant would be prejudiced by not vacating the default judgment and hearing the case on its merits. Public policy strongly favors hearing a case on its merits over defaulting a party in an action. (Fishman v. Beach, 246 A.D.2d 779, 780 (3d Dept 1998)).

### **CONCLUSION**

For the foregoing reasons, Defendant’s Motion to Vacate Default Judgment should be granted and further relief the Court deems just and proper.

Dated: June 3, 2016  
Great Neck, New York

  
\_\_\_\_\_  
Erica T. Yitzhak, Esq.  
Erica T. Yitzhak, Esq. P.C.  
17 Barstow Road, Suite 406  
Great Neck, New York 11021  
Phone (516) 466-7144  
Fax (516) 466-7145

IN SUPPORT OF ORDER TO SHOW CAUSE  
FOR PRELIMINARY INJUNCTION

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
ONEWEST BANK NA,

Plaintiffs

against,

FRITZ OBAS, NADEGE GEORGES, LEONARD DELASKY  
Defendants

2:14-CV-03238

AFFIDAVIT IN  
SUPPORT

-----X  
COUNTY OF NASSAU )  
STATE OF NEW YORK )

I, Nadege Georges, am over eighteen and being duly sworn, depose and says:


1. I, Nadege Georges, as plaintiff in the above-entitled action, respectfully move this court to order Plaintiff to show cause why they should not be enjoined from selling my home at 1330 E Street, Elmont, New York at a foreclosure auction on June 7, until a final disposition on the merits in the above-entitled action.
2. I own and am in possession of 1330 E Street, Elmont, New York. ("Premises").
3. I was never served with a Summons in a Civil Action or a Complaint in this matter, and I had no idea about this matter until I received a Notice of sale.
4. I was never served with the motion for a default judgment in this matter
5. I hired an attorney to represent me upon my learning about this action and I will be sending in a full package to the bank for consideration on a possible loan modification.
6. My attorney informed me the Summons, Complaint and Motion for a default judgment were all allegedly served at 1330 East Street, Elmont, New York. I

reside at 1330 E Street, Elmont, New York, a different address as there is both an E Street and an East Street in Elmont.

7. I am working as a burn unit nurse at Nassau County Medical Center and can afford to make monthly mortgage payments.
8. Unless this order is issued, I will suffer immediate and irreparable injury, loss and damage in that I will lose the home I reside in with my husband and three children, ages 8, 15 and 20. As can be seen from the foregoing, I have no adequate remedy at law.
9. Since there are only 4 days until the scheduled foreclosure auction of my home on June 7, 2016, this motion has been brought by order to show cause and no prior request has been made for the relief requested herein.

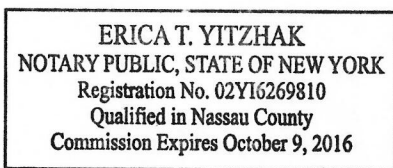
Wherefore, I respectfully request the Court grant the within relief as well as such other and further relief that may be just and proper.

Dated: June 3, 2016  
Great Neck, New York

  
Nadege Georges

Sworn to before me this  
3 Day of June, 2016

  
Notary Public





# **Exhibit “A”**

AO 440 (Rev. 06/12) Summons in a Civil Action

# UNITED STATES DISTRICT COURT

for the

Eastern District of New York

ONEWEST BANK, NA

*Plaintiff(s)*

v.

FRITZ OBAS, ET AL.

*Defendant(s)*

Civil Action No. 2:14-cv-03238

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* NADEGE GEORGES  
1330 EAST STREET  
ELMONT, NEW YORK 11003

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: GROSS POLOWY, LLC  
25 NORTHPOINTE PARKWAY, SUITE 25  
AMHERST, NY 14228

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 2:14-cv-03238

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for (name of individual and title, if any) \_\_\_\_\_  
was received by me on (date) \_\_\_\_\_.

☐ I personally served the summons on the individual at (place) \_\_\_\_\_  
\_\_\_\_\_ on (date) \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with (name) \_\_\_\_\_,  
a person of suitable age and discretion who resides there,  
on (date) \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on (name of individual) \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of (name of organization) \_\_\_\_\_  
\_\_\_\_\_ on (date) \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other (specify): \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
Server's signature

\_\_\_\_\_  
Printed name and title

\_\_\_\_\_  
Server's address

Additional information regarding attempted service, etc:

NADEGE GEORGES  
1330 EAST STREET  
ELMONT, NY 11003

FRITZ OBAS  
5 SUNSET AVE  
WHEATLEY HEIGHTS, NY 11798

LEONARD DELASKY A/K/A DELASKY LEONARD  
1330 E STREET  
ELMONT, NY 11003

HON. GARY R. BROWN  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
100 FEDERAL PLAZA  
COURTROOM 840  
CENTRAL ISLIP, NY 11722

**Exhibit “B”**



United States District Court  
for the  
Eastern District of New York

ONEWEST BANK, NA

Plaintiff,

v.

Civil Action No. 14-cv-3238

FRITZ OBAS, NADEGE GEORGES,  
LEONARD DELASKY A/K/A DELASKY  
LEONARD, JOHN DOE (being fictitious  
and unknown to Plaintiff, intended to be  
tenants, occupants, persons, or corporations  
having or claiming an interest in or lien  
encumbering the property described in the  
Complaint or their heirs at law, distributes,  
executors, administrators, trustees,  
guardians, assignees, creditors, or  
successors.)

Defendants.

AFFIDAVIT OF SERVICE BY MAIL

Richard R. Boorman, being duly sworn, deposes and states as follows:

That the deponent is an employee of Gross Polowy, LLC, attorney for the Plaintiff in the above entitled action and resides in the State of New York. That Deponent is not a party to this action and is over the age of 18 years.

That on the 2nd day of April, 2015, Deponent served a true copy of the Notice of Motion for Default Judgment, Affirmation in Support, and Exhibits in this action on the Defendant(s) and/or attorneys for the Defendant(s) and judges, whose names, representation and designated addresses appear below or as shown on the attached by depositing a true copy of same, enclosed in a postpaid properly addressed wrapper, in an official postal depository at 1775 Wehrle Drive, Suite 100, Williamsville, NY 14221, under the care and custody of the United States Postal Service within the State of New York.

The foregoing statements are true, under penalty of perjury.

  
Richard R. Boorman

Sworn to before me this 2nd day  
of April, 2015.

Notary Public

LISA M. WILLIAMS  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN NIAGARA COUNTY  
My Commission Expires August 26, 2018

*See attached sheet*

ONEWEST BANK, NA

vs.

FRITZ OBAS, NADEGE GEORGES and LEONARD DELASKY A/K/A DELASKY LEONARD

Civil Action No.: 2:14-cv-03238

\*\*\*\*\*

FRITZ OBAS  
5 SUNSET AVE  
WHEATLEY HEIGHTS, NY 11798

NADEGE GEORGES  
1330 EAST STREET  
ELMONT, NY 11003

LEONARD DELASKY A/K/A DELASKY LEONARD  
1330 E STREET  
ELMONT, NY 11003

KIMBERLY D. LERNER, ESQ.  
REFEREE  
1 OLD COUNTRY ROAD, SUITE 125  
CARLE PLACE, NY 11514-1845